MOTION FILED

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No. 06-223

In The
Supreme Court of the United States

JOHN DREBICK and JANE DOE DREBICK,
husband and wife, d/b/a DREBICK INVESTMENTS,

Petitioners,

v.

CITY OF OLYMPIA, a Washington code city,

Respondent.

On Petition For Writ Of Certiorari
To The Supreme Court Of Washington

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF BUILDING INDUSTRY ASSOCIATION OF WASHINGTON IN SUPPORT OF PETITIONER JOHN AND JANE DOE DREBICK

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Supreme Court Rule 37.2(b), the Building Industry Association of Washington (BIAW) moves to file the attached brief in support of the Petition for Writ of Certiorari. Consent has been received by Petitioner and that consent has been lodged with this Court. Respondent, however, has withheld consent thus necessitating the filing of this motion.

BIAW seeks to augment Petitioner-Drebick's arguments by illustrating that there is a wide split of authority among the lower state and federal courts over the question of whether legislatively imposed exactions and monetary exactions are subject to the "essential nexus" and "roughly proportional" standards enunciated by this Court in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1994) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). In addition, BIAW seeks to inform this Court of the copious scholarly commentary on the subject of extending *Nollan* and *Dolan's* standards to legislatively imposed exactions and monetary exactions. BIAW also seeks to demonstrate that unfair and disproportionate exactions can, and do, occur whether they are imposed legislatively or adjudicatively or whether such exactions include a dedication of land or are monetary in nature.

The opinion below holds that the heightened scrutiny set forth by this Court in *Dolan* is not applicable to legislatively imposed monetary exactions. As a result, the lower court's ruling stands for the proposition that when monetary conditions are imposed legislatively on property owners, the conditions need not be roughly proportional to the impact created by the proposed development. The

accompanying brief of amicus curiae suggests that this is a serious conflict that should be resolved by this Court.

For these reasons, BIAW respectfully requests permission to file the attached brief amicus curiae.

DATED: September 13, 2006

Respectfully submitted,

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INTEREST OF AMICUS[1]

BIAW is Washington's largest trade association, with 12,254 members representing over 350,000 citizens who work in various trades associated with the development and construction of residential housing. BIAW members routinely are required to pay monetary exactions, such as the traffic impact fees at issue in this case, as a condition of receiving subdivision approval. BIAW has a substantial interest and stake in the determination of whether such fees must be "roughly proportional" to the impact caused by the proposed development.

STATEMENT OF THE CASE

This case involves the appropriate judicial scrutiny that should be applied to legislatively-imposed monetary exactions. An exaction is a demand that a property owner give up something of value – whether it is land, an interest in private property, or money – as a condition to obtaining permits or other governmental approvals to build on one's property.

The type of exaction involved in this case is an impact fee. Impact fees are imposed by local governments on developers and landowners as a condition of new development in order to generate revenue for infrastructure allegedly necessitated by the new development. Impact

[1] Pursuant to Supreme Court Rule 37(6), counsel for amicus authored the brief in whole. Amicus solely funded the preparation and filing of this brief. Respondent – City of Olympia requested that BIAW include a copy of Respondent's refusal letter with the submission of its brief. A copy is submitted herewith.

fees have been an increasingly popular way for governments to raise revenue in lieu of taxes.

In this case, John Drebick and Jane Doe Drebick, d/b/a Drebick Investments (Drebick), constructed a 54,000 square-foot office building in Olympia, Washington. As a condition for approval of the project and issuance of building permits, Drebick was required to pay a total of $132,328.98 as a transportation impact fee. The impact fee was calculated according to the City's legislatively adopted fee schedule. *See* Petition for Certiorari, App. at A-1. The impact fee was "based upon [the] contemplated cost of citywide traffic projects without regard to the specific impact the Drebick development might or might not have on any proposed project . . . " Pet. for Cert., App. at A-21.

Under this Court's precedent in *Dolan v. City of Tigard,* Drebick contends that the traffic impact fee is not related in "extent to the impact of the proposed development." 512 U.S. at 391.

The court below stated that the heightened standard of judicial scrutiny set forth in both *Nollan v. California Coastal Commission*, 483 U.S. 825 (1994) and *Dolan* requiring that exactions be roughly proportional to the impact caused by the proposed development, was not triggered because the fees were uniformly applied under the authority of previously adopted legislation. Specifically, the court argued that "neither *Nollan* nor *Dolan* concerned the imposition of impact fees but addressed instead the authority of a local government to condition development approval on a property owner's dedication of a portion of land for public use." Pet. for Cert., App. at A-11 – A-12. In addition, the court stated that "neither the

United States Supreme Court nor this court has determined that the tests applied in *Nollan* and *Dolan* to evaluate land exactions must be extended to the consideration of fees imposed to mitigate the direct impacts of a new development, much less to the consideration of more general growth impact fees imposed pursuant to statutorily authorized local ordinance." Pet. for Cert., App. at A-12.

The issue presented for this Court's resolution is whether the applicability of the Constitutional protections established in *Nollan* and *Dolan* can be so easily circumvented.

REASONS FOR GRANTING THE WRIT

Supreme Court Rule 10.1(b) lists among the considerations governing review on certiorari the circumstance when a state court of last resort has decided a federal question in a way that conflicts with another state court of last resort, or with a United States court of appeals. Rule 10(c) also includes as a ground for review when a state court of last resort has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court. Both of these grounds for review are present in this case.

I

THERE IS A SPLIT AMONG STATE AND FEDERAL COURTS THAT SHOULD BE SETTLED BY THIS COURT

Lower courts have interpreted *Dolan* in an inconsistent manner, thus creating a nationwide split of authority as to whether *Dolan's* rough proportionality test applies to legislatively imposed exactions and/or monetary exactions.

One current sitting Justice and one former Justice of this Court have acknowledged the "conflict" over whether *Dolan's* test should be applied to legislatively imposed exactions. *See Parking Association of Georgia, Inc. v. City of Atlanta*, 515 U.S. 1116, 1118 (1995) (Thomas, J., and O'Connor, J., dissenting from denial of certiorari) (stating that "the lower courts should not have to struggle" with this issue.).

Both scholars and the courts have identified the significant "split of authority" clouding this issue. *See, e.g.*, Pensley, D.S., *Real Cities, Ideal Cities: Proposing A Test of Intrinsic Fairness for Contested Development Exactions*, 91 CORNELL L. REV. 699, 705 (2006) (noting the confusion caused by the varying application of *Nollan/Dolan's* test to legislative v. adjudicative and monetary exactions by the courts); Faus, Richard Duane, *Exactions, Impact Fees, and Dedications: Local Government Responses to* Nollan/ Dolan *Takings Law Issues*, 29 STETSON L. REV. 675, 693-701 (2000) (recognizing a "nationwide split of authority" on whether the *Dolan* test applies to legislatively enacted, uniformly applied impact fees); Reznik, Inna, *The Distinction Between Legislative and Adjudicative Decisions in* Dolan v. City of Tigard, 75 N.Y.U. L. REV. 242, 256-57 (2000) ("There is considerable disagreement over whether

legislative decisions are subject to *Dolan's* heightened scrutiny review"); *see also Garneau v. City of Seattle*, 147 F.3d 802, 811 (9th Cir. 1998) (there is "considerable doubt" about the applicability of the *Dolan* rough proportionality test to "legislative, as opposed to administrative exactions."); *Home Builders Association of Central Arizona v. City of Scottsdale,* 930 P.2d 993, 1000 (Ariz. 1997) (the question "has not been settled"); *Rogers Machinery, Inc. v. Washington County*, 45 P.3d 966, 976 (Or. Ct. App. 2002), *cert. denied*, 538 U.S. 906 (2003) (A "split of authority exists in lower courts as to whether *Dolan* is limited to development conditions imposed through adjudicatory decisions or whether it extends to those imposed as a result of generally applicable legislation").

A review of the lower courts dealing with the issue of whether *Dolan* is limited to adjudicatively imposed exactions, reveals the wide split of authority. On the one hand, a number of federal and state courts have applied *Nollan/Dolan's* heightened scrutiny to legislatively imposed exactions. *See, e.g., City of Portsmouth v. Schlesinger*, 57 F.3d 12, 16 (1st Cir. 1995) (*Dolan* analysis applied to impact fee imposed by ordinance); *National Association of Home Builders of the United States v. Chesterfield County*, 907 F. Supp. 166, 167 (E.D. Va. 1995), *aff'd*, 92 F.3d 1180 (4th Cir. 1996) (*Dolan* applied to a county policy to guide the county's acceptance of proffers); *Curtis v. Town of South Thomaston*, 708 A.2d 657, 660 (Me. 1998) (*Dolan* applied to fire protection ordinance requiring developers to construct fire pond); *Manocherian v. Lenox Hill Hospital*, 643 N.E.2d 479 (N.Y. 1994), *cert. denied*, 514 U.S. 1109 (1995) (*Nollan* applied to statute requiring apartment owners to renew certain leases with non-private hospital employees); *Trimen Development Company v. King County*,

877 P.2d 187, 191 (Wash. 1994) (*Dolan* applicable to ordinance imposing park development fees).

On the other hand, a number of state courts have held *Dolan's* heightened review is inapplicable to legislatively imposed exactions. *See, e.g., Homebuilders Association v. City of Scottsdale,* 930 P.2d 993, 1000 (Ariz. 1997) (*Dolan's* rough proportionality test does not apply to water service fee enacted by ordinance and uniformly applied to all properties); *Ehrlich v. City of Culver City*, 911 P.2d 429, 444 (Cal. 1996), *cert. denied*, 519 U.S. 929 (1996); (*Dolan* inapplicable to fees imposed legislatively); *Krupp v. Breckenridge Sanitation District*, 19 P.3d 687 (Colo. 2001) (*Dolan* inapplicable to sanitation district fee imposed legislatively); *Parking Association of Georgia v. City of Atlanta*, 450 S.E.2d 200, 203 (Ga. 1994), *cert. denied*, 515 U.S. 1116 (1995) (ordinance imposing parking lot standards upon parking lot owners held not to violate *Dolan* because it was a legislative determination); *Southeast Cass Water Resource District v. Burlington Northern R. Co.*, 527 N.W.2d 884, 885 (N.D. 1995) (*Dolan* not applicable to requirement that railroad pay costs for alterations of bridge and culverts because imposed under legislative enactment); *Waters Landing Limited Partnership v. Montgomery County*, 650 A.2d 712, 724 (Md. 1994) (*Dolan* inapplicable to development impact fees); *Arcadia Development Corp. v. City of Bloomington*, 552 N.W.2d 281, 286 (Minn. 1996) (*Dolan* inapplicable to ordinance requiring mobile home park owners to close their parks to pay relocation cots to park residents); *Rogers Machinery*, 45 P.3d at 967, 982 (*Dolan* inapplicable to traffic impact fee assessed by ordinance).

To further illustrate the varying applicability of the *Nollan/Dolan* standards by the lower courts, some jurisdictions have applied heightened scrutiny to impact fees that are imposed adjudicatively, as opposed to fees imposed legislatively. *See, e.g.*, Ball, Carlos A. & Reynolds, Laurie, *Exactions and Burden Distribution in Takings Law*, 47 WM. & MARY L. REV. 1513, 1559-60 (2006) (Lower courts have "disagreed widely" on whether *Nollan/ Dolan's* heightened scrutiny applies to legislatively imposed exactions and to monetary exactions); *see also Ehrlich v. City of Culver City*, 911 P.2d at 464-65 (holding that *Nollan* and *Dolan's* "essential nexus" and "rough proportionality" tests apply to adjudicatively imposed exactions); *San Remo Hotel L.P. v. City of San Francisco*, 41 P.3d 87, 105-06 (Cal. 2002) (Court refusing to apply *Nollan/Dolan's* standards to legislative impact fee).

Yet another set of courts have applied *Nollan/Dolan's* test to impact fees without distinguishing between legislative and adjudicative exactions. *See, e.g., Town of Flower Mound v. Stafford Estates Limited Partnership*, 135 S.W.3d 620, 642 (Tex. 2004) (court holding that *Dolan* applies to both "a dedication of property to the public and a requirement that property already owned by the public be improved" while declining "to adopt a bright-line adjudicative/ legislative distinction"); *Home Builders Association of Dayton & the Miami Valley v. City of Beavercreek*, 729 N.E.2d 349, 353 (Ohio 2000) (*Dolan's* "rough proportionality" test applicable to ordinance imposing impact fees); *Northern Illinois Home Builders Association, Inc. v. County of Du Page*, 649 N.E.2d 384, 388-89 (Ill. 1995) (*Dolan* applied to transportation impact fee ordinance).

The confusion caused by this wide split of authority has led to copious law review articles calling on this Court

to provide clarity in order to prevent this issue from continuing to percolate in the lower courts. *See* Reynolds, Laurie & Ball, Carlos A., *Exactions and the Privatization of the Public Sphere,* 21 J.L. & POL. 451, 451 (2005) ("Of the extensive scholarly commentary spawned by the Supreme Court's jurisprudence, the critique of the exactions branch of the Takings Clause doctrine is rich and voluminous"); Ball & Reynolds, 47 WM. & MARY L. REV. at 1519 (authors urging this Court to "extend *Nollan* and *Dolan* to all local government exactions"); Reznik, *supra,* at 267 (arguing that it is time to "reconsider the effectiveness of *Dolan's* legislative/adjudicative distinction"); Breemer, J. David, *The Evolution of the "Essential Nexus": How State and Federal Courts Have Applied* Nollan *and* Dolan *and Where They Should Go from Here,* 59 WASH. & LEE L. REV. 373 (2002) (arguing that *Nollan* and *Dolan* should be applied to both legislative and monetary exactions); Pensley, D.S., *supra,* at 704 (asserting "there is no principled basis for giving greater deference to exactions imposed through legislative enactment than those to imposed through adjudication"); Callies, David L., *Regulatory Takings and the Supreme Court: How Perspectives on Property Rights Have Changed from* Penn Central *to* Dolan, *and What State and Federal Courts Are Doing About It,* 28 STETSON L. REV. 523, 571 (1999) (arguing that it is "difficult to make out a case for limiting *Nollan/Dolan* to dedications only").

These cases and legal commentary reflect the confusion over whether *Dolan's* rough proportionality test should be applied to legislative or adjudicative land use decisions, and whether it applies to dedications of land and/or monetary exactions. The effect is that in some jurisdictions, lower courts will apply the *Dolan* heightened

scrutiny to legislatively imposed exactions, while in other jurisdictions a less stringent review is applied to similar exactions. Likewise, in some jurisdictions, lower courts will apply *Dolan's* standards to monetary exactions while other jurisdictions will abstain from doing so. This inconsistent application of *Dolan* results in incongruous application of the federal constitution. Property owners seeking government permits, regardless of the state where they reside, are entitled to have their federal constitutional rights consistently and fully protected. The time is ripe for this Court to provide the lower courts with necessary guidance on this issue.

II

WHETHER THE *DOLAN* "ROUGH PROPORTIONALITY" STANDARD APPLIES TO LEGISLATIVELY IMPOSED MONETARY EXACTIONS PRESENTS AN IMPORTANT QUESTION OF REGULATORY TAKINGS LAW

The Takings Clause of the Fifth Amendment of the United States Constitution, made applicable to the States through the Fourteenth Amendment, *Chicago, B. & Q.R. Co. v. Chicago*, 166 U.S. 226, 236 (1897), provides: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. amend. V. The principal purpose of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

This Court has established a special subset to regulatory takings law when the government conditions the granting of permit approval on an exaction:

> Under the well-settled doctrine of "unconstitutional conditions," the government may not require a person to give up a constitutional right – here the right to receive just compensation when property is taken for a public use – in exchange for a discretionary benefit conferred by the government where the benefit sought has little or no relationship to the property.

Dolan, 512 U.S. at 385.

As succinctly put by Justice Harlan over 100 years ago:

> In our judgment, the exaction from the owner of private property of the cost of a public improvement in substantial excess of the special benefits accruing to him is, to the extent of such excess, a taking, under the guise of taxation, of private property for public use without compensation.

Village of Norwood v. Baker, 172 U.S. 269, 279 (1898).

This Court has formulated a two-part test for use in determining whether an exaction constitutes an impermissible taking. First, the court determines whether an essential nexus exists between a legitimate state interest and the condition exacted by the government. *Nollan*, 483 U.S. at 836. If an essential nexus exists, the court must decide the required degree of connection between the exaction and the projected impact of the proposed development. *Dolan*, 512 U.S. at 386-88. No precise mathematical calculation is required, but the government must make

some sort of individualized determination that the exaction is roughly proportional in both nature and extent to the proposed impact of the proposed development. *Id.* at 391.

Under *Dolan*, the burden of proof to justify the exaction is on the government, not the property owner. 512 at 374, n.8. The test set forth in *Dolan* is important because its "rough proportionality" test elevates the level of scrutiny courts must give to exactions and prevents governments from leveraging permit approval on illegal exactions. Unfortunately, as noted above, it is not abundantly clear which courts will apply *Dolan* to legislatively imposed exactions or monetary exactions. This is an important question of federal law which has not been, but should be, settled by this Court.

The outcome of this case will have an impact on anyone who is subject to a legislatively authorized exaction or monetary exaction, such as an impact fee. In turn, this case would likely affect the majority of developers and purchasers of new homes in this nation. Impact fees can range from several hundred dollars to tens of thousands of dollars per home or building. *Impact Fee Handbook* (National Association of Home Builders), 1997 at 2. A study shows that impact fees and regulatory costs account for a nationwide average of 4.5 percent of the cost of a new home. George Avalos, *Tangle of Red Tape Inflates Costs for Homebuyers in the East Bay*, CONTRA COSTA TIMES, Sept. 29, 2002. An example in the San Francisco area reflects the effect burdensome exactions can have on housing affordability. In Livermore, California building exactions have topped $100,000 per house. HBA News, *City of Livermore Tops $100,000 in Home Building Fees*, July/August 2002 at 14. Because such fees become part of the

purchase price, the detrimental effect it has on housing affordability is staggering.

As governments continue to face economic challenges of generating additional revenue to fund needed infrastructure without raising taxes, the trend will be for more local jurisdictions to impose such exactions in increasing amounts. Amicus BIAW is concerned that without applying *Dolan's* heightened scrutiny, governmental bodies will be able to shift the responsibility for funding general improvements onto a discrete segment of the public. The *Dolan* rough proportionality test ensures that the cost of such exactions does not exceed the development's fair share of the cost of improvements.

Another measure of the importance of this case is the amount of litigation that has already taken place on this issue and the amount of legal commentary discussing the issue. The current uncertainty over what standard of review governs such exactions benefits no one. Both developers and governmental bodies deserve to know the appropriate standard of review for determining when an exaction is an unconstitutional taking.

The issue presented in this case involves a substantial federal question involving regulatory takings. The resolution of this issue has far reaching effects and therefore should be addressed by this Court.

III

DOLAN'S HEIGHTENED SCRUTINY SHOULD BE APPLIED TO LEGISLATIVELY IMPOSED MONETARY EXACTIONS

The question presented is whether the "rough proportionality" standard announced in *Dolan* applies to the exaction in this case. Amicus contends that it does apply because there is no principled basis for distinguishing between legislative versus adjudicative land use decisions, or monetary versus dedicatory exactions.

Courts limiting the application of the "rough proportionality" standard to purely adjudicative exactions, as opposed to legislatively authorized exactions, reason that the risk of municipal "extortion" is much greater in the adjudicative context. *See San Remo*, 41 P.3d at 102-104; *see also Home Builders Association of Central Arizona*, 930 P.2d at 1000. More specifically, these courts rationalize that the legislative and political processes have more protections in place for landowners from such abuses by government. This reasoning is flawed. *See* Ball & Reynolds, *supra*, at 1564 (the legislative-adjudicative "distinction serves as a poor proxy for the existence of improper leveraging on the part of the government"); Pensley, *supra*, at 704 ("[B]ecause in all practicality legislative and adjudicative land use decisions are indistinguishable, any judicial attempt to rubber stamp ostensible legislative actions is flawed"); Breemer, *supra*, at 396 ("There is . . . no compelling reason to avoid applying *Nollan* and *Dolan* to all exactions"); and Reznik, *supra*, at 280 (the legislative-adjudicative "distinction fails to address the policy problems Dolan intended to solve: coercive and unfair government behavior").

There is no basis for the rationale that legislative and political processes provide more protection to property developers. First, due process does not apply to legislative enactments so landowners or future potential developers are entitled to no notice of proposed impact fee legislation. *See* Pensley, *supra*, at 706 ("Procedural due process in the land use context is required only for administrative or quasi-judicial decision-making [and] does not apply to legislative decision-making").

Second, unlike the distinct Constitutional divisions between federal and state levels, no such demarcation exists at the local level. *See* Ball & Reynolds, *supra*, at 1562 (The "marked division of governmental functions that is constitutionally required at the federal and state levels is often absent at the local level"). The Texas Supreme Court is unconvinced "that a workable distinction can [] be drawn between actions denominated adjudicative and legislative." *Flower Mound*, 135 S.W.3d at 641.

As a result of this blurred line between legislative and adjudicative decision-making, majority oppression can occur when locally elected officials abide by the anti-development sentiment of the electorate. Yet, *Dolan* was aimed at protecting developers from this type of "majority oppression." *See* Reznik, *supra*, at 270-01 (arguing that legislative land use decisions made at the local level may reflect majoritarianism oppression). The correct application of the *Dolan* test to all exactions protects those minority interests.

Exactions can be imposed unfairly and disproportionately through legislation or on an individual basis. Applying *Dolan* to one form of government action, but not the

other, does not make doctrinal sense. The threat of leveraging discussed in *Dolan* is just as likely to occur in legislative decision making processes as in adjudicative settings. Because both types of exactions involve conditioning governmental land use approval and present the same opportunities for governmental "leveraging," the constitutional protection should be consistently applied.

As Justice Thomas noted in *Parking Association of Georgia:*

> It is not clear why the existence of a taking should turn on the type of governmental entity responsible for the taking. A city council can take property just as well as a planning commission can. Moreover, the general applicability of the ordinance should not be relevant in a takings analysis. If Atlanta had seized several hundred homes in order to build a freeway, there would be no doubt that Atlanta had taken property. The distinction between sweeping legislative takings and particularized administrative takings appears to be a distinction without a constitutional difference.

515 U.S. at 1117-18. A subsequent Illinois state court decision agreed with Justice Thomas's viewpoint. *Amoco Oil Company v. Village of Schaumburg*, 661 N.E.2d 380 (Ill. 1996). That court said, "Certainly, a municipality should not be able to insulate itself from a taking challenge merely by utilizing a different bureaucratic vehicle when expropriating its citizen's property." *Id.* at 390.

The *Dolan* test balances the competing interests of both developers and government and should be applied to all types of exactions. The Supreme Court of Ohio explained such competing interests in holding that *Dolan*

was applicable to legislatively imposed impact fee ordinance for funding roadway improvements:

> We believe this test [*Dolan*] will adequately balance the interests of local governments with those of property owners. The first prong of the test decides whether the ordinance is an appropriate method to address the city's stated interests, and the second prong assures that the city and developers are paying their proportionate share of the cost of new construction.

City of Beavercreek, 729 N.E.2d at 356.

More recently, the Texas Supreme Court said:

> While we recognize that an ad hoc decision is more likely to constitute a taking than general legislation, we think it entirely possible that the government could "gang up" on particular groups to force extractions that a majority of constituents would not only tolerate but applaud, so long as burdens they would otherwise bear were shifted to others.

Flower Mound, 135 S.W.3d at 641.

The case now at bar presents a good example of what happens when *Dolan's* rough proportionality test is held inapplicable to a monetary exaction imposed legislatively. Drebick is saddled with paying significantly more than the proportionate share of the cost that the development will have on traffic. The lower court's decision thus creates a loophole for governments to avoid having to comply with *Nollan/Dolan*. Under the decision below, government entities can use their "leveraging" authority through legislation instead of the adjudicative process to insulate

themselves from liability under the Constitution. The Fifth Amendment does not allow such an exemption.

CONCLUSION

Whether *Dolan's* "rough proportionality" standard applies to all legislatively imposed exactions is an issue needing definitive resolution by this Court as evidenced by the split of authority across the nation on this issue. Until this Court resolves this substantial federal question concerning regulatory takings law, the *Dolan* standard will continue to be inconsistently applied across the nation by state and federal courts. Amicus respectfully urge this Court to grant the petition for writ of certiorari and reverse the judgment of the Washington Supreme Court.

Respectfully submitted,

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